

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Biennial Review of Telecommunications)	WT Docket No. 02-310
Regulations Within the Purview of the Wireless)	
Telecommunications Bureau)	
 To: The Commission		

REPLY COMMENTS

The Rural Cellular Association (“RCA”)¹, by its attorneys and pursuant to Section 1.430 of the rules of the Federal Communications Commission (“FCC”), respectfully submits these Reply Comments in response to comments submitted at the invitation of the Wireless Telecommunications Bureau (“the Bureau”)² concerning the repeal or modification of regulations that are no longer necessary in the public interest.

Except where stated, RCA herein specifically replies to and supports proposals discussed in the Petition For Rulemaking Of The Cellular Telecommunications & Internet Association (“CTIA”), filed July 25, 2002, and its supplement, Further Comments Of CTIA, filed October 18, 2002. Set forth below are RCA’s comments concerning particular FCC rules.

1 RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

2 *The Commission Seeks Comment in the 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireless Telecommunications Bureau, Public Notice*, WT Docket No. 02-310, FCC 02-264, released September 26, 2002.

I. Part 1 – Practice and Procedure

Certain rules contained within Part 1 of FCC Rules are no longer necessary for the Commission to protect and further the public interest. In fact, the rules described below are counterproductive because the burdens they impose upon the wireless industry, particularly on rural wireless carriers with comparatively small administrative staffs, are out of balance with any benefits derived by the Commission or the public from continued enforcement of those rules.

Annual Employment Report, FCC Form 395. The annual filing of employment reports (FCC Form 395) is redundant to reports filed with other agencies. Employment complaints based upon claims of unlawful discrimination are filed with and administered by the Equal Employment Opportunity Commission or with a state or local agency. It is a nonessential and unproductive exercise to report to the FCC the status of such claims, and to report the numbers of male, female and minority employees of the filer. It is not the role of the FCC to enforce civil rights. Supervision of enforcement by other agencies is also a waste of Commission resources. Section 1.815 of the FCC rules should be eliminated.

Disclosure of Pending Non-FCC Litigation. Similarly, reporting to the FCC details of pending non-FCC litigation is not necessary when license applications are filed with the FCC. There is little or no history of use of such information by FCC staff. Rather, it is burdensome to the application process, and adds undue delay and expense in both the preparation of applications by filers and in the Bureau's review of applications. Maintaining the requirement introduces the possibility of unintentional non-disclosure of facts by persons responsible for preparing applications who may be unfamiliar with non-regulatory issues affecting an applicant.

Disclosure of Previously Approved Foreign Ownership or Activity in a Quiet Zone. Also unnecessary is repeated disclosure of an applicant's foreign ownership already approved by the Commission, or of operation in a designated Quiet Zone that was previously reviewed and found not to be harmful to protected operations. It should be unnecessary to reapply on FCC Forms 601 and 603 for approved status. FCC Rule Sections 1.923 and 1.924 should be modified to simplify the application process.

Approval for Withdrawal of Pleadings. Section 1.935 requiring FCC approval for withdrawal of pleadings adds to complexity and delay in settling disputed matters before the FCC. The documentation required and the length of time it takes to receive approval slows implementation of settlement agreements and delays the introduction of proposed service. In any given case the Bureau can request assurance as to any matter of concern such as whether the amount of consideration promised or paid for withdrawal of an application or pleading is limited to the legitimate and prudent expenses incurred by the withdrawing party. But the rule should not require in every instance of withdrawal that prior FCC approval be granted.

Pre-Auction (Short-Form, FCC Form 175) Application Requirements are Burdensome. RCA agrees with CTIA that auction applicants should not be required to file extensive ownership information required by Rule Section 1.2105 simply to enter the auction, because the information is relevant only if the applicant wins. At a minimum, detailed ownership information should not be required of applicants not seeking a bid credit based upon gross revenues attributable to an applicant. High bidders in all cases must submit complete ownership information at the post-auction stage in exhibits to FCC Form 601 (Long Form application). Developing and presenting ownership information is an unnecessary cost and is burdensome to applicants who merely seek to participate in an auction. Many bidders have been surprised by the extent of the information required for the Short Form application exhibits. For example, disclosure of family trust details and of non-

controlling ownership interests can be problematic and burdensome, and introduce obstacles and costs to potential filers. Pre-auction ownership disclosure requirements potentially reduce the number of bidders in an auction. The requirement is not necessary to prevent unqualified bidders from becoming licensees. Better curative measures exist, such as awarding the license to the second highest bidder if the high bidder is found unqualified at the post-auction stage.

Disclosure of Transaction Agreements. The reporting requirement of Section 1.2111(a) burdens applicants who are not involved in any problem the rule seeks to remedy. Disclosure of transaction documents within three years of grant of a license awarded by auction should not be required of licensees when a designated entity and a bid credit are not involved. Collection of such information burdens the Commission's staff with review of documents that have no bearing on the qualifications of a proposed licensee or controlling party, and it interferes with legitimate business concerns over confidentiality of transaction terms.

Rule Implementing the National Environmental Policy Act of 1999. Section 1.1307(a)(4) should be modified to state that Environmental Assessments are not required to be filed for antenna structure facilities for which a State Historic Preservation Office has issued a finding of "no effect" or "no adverse effect," or where the facility in the historic area is already approved as an antenna site under the Nationwide Collocation Programmatic Agreement. Codification of this policy would streamline provision of new wireless service in areas that include designated historic areas.

II. Part 20 – E911 Services

The text of FCC Rule Section 20.18 should be updated to reflect FCC policy, particularly to permit carriers and Public Safety Answering Points ("PSAPs") to negotiate a mutually agreed upon implementation period. RCA also suggests that the rule be modified to permit any provider of commercial mobile radio services ("CMRS") to notify the Commission of its decision to opt into

the terms and conditions of any FCC order granting other CMRS licensees a waiver or temporary waiver of the 911/E911 requirements. CTIA's proposal in this respect would essentially permit all CMRS carriers to abide by the terms of the Commission's Order staying certain wireless Enhanced 911 Phase II deployment deadlines for Tier II and Tier III carriers.³

RCA also suggests that the FCC resolve the discrepancy between the terms of the Order and the terms of Section 20.18(f), as the former refers to a percentage of service to the PSAP's coverage area, and the latter refers to a percentage of service to the licensee's coverage area. The Order did not explain any basis for the reference to a PSAP's service area as it stated new deadlines for implementation of E911 Phase II service by carriers relying on a network-based technology for compliance. Indeed, there is no accessible public record of a PSAP's service area by which a carrier can assess its responsibilities, and by which the Commission can enforce the requirement as it appears in the Order. If the Commission intended to change the coverage area requirement in the Order to refer to the PSAP's service area instead of the carrier's coverage area, it should have required PSAPs to identify the boundaries of their areas in order for their requests to be considered valid to trigger carriers' Phase II deployment obligations.

III. Part 22 – As Concerning Cellular Radiotelephone Services

Posting of Station Call Sign. In furtherance of regulatory parity for cellular service providers and other broadband CMRS carriers, the FCC should eliminate Section 22.303 requiring cellular carriers to post the station call sign at every fixed transmitting facility of the station.

Cellular Cross-Interest Rule in RSAs. The Commission should also eliminate the cellular cross-ownership rule applied to cellular licensees in Rural Service Areas, set forth in Section 22.924 of FCC Rules. The generalization that rural markets are less competitive than metropolitan markets

³ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order to Stay, released July 26, 2002.

is outmoded. A permanent embargo on rural cross-ownership is unwarranted, and in fact stifles the investment needed to compete with other CMRS carriers and with companies offering services using unlicensed spectrum. The Commission maintains authority for the case-by-case review of any proposed license assignment or transfer of control, and should utilize that mechanism to consider anti-competitive issues that may arise in any given market.

Alternative Propagation Studies. Responding to a suggestion made in Comments Of CommNet Capital, LLC (“CommNet”), filed October 18, 2002, RCA questions the practicality of a proposal that would require cellular licensees making alternative propagation studies to do so via actual drive tests in lieu of paper studies as are presently permitted by Section 22.911(b). CommNet correctly recognizes that the cost of engaging in repeated drive tests would be prohibitive. In fact the process is so costly and time consuming that CommNet’s proposal, even if limited to a complete one-time drive test, would effectively remove the tool of the alternative contour from the licensee’s measurement of its protected service area. The newest modeling software is greatly improved. The results can be fine-tuned to incorporate empirical data gathered from the field and to adjust for seasonal changes. Rather than eliminate the use of predictive studies, consideration should be given to the accuracy of the newest modeling methods, so that they are credited accordingly.

IV. Part 43 – Reports of Common Carriers

RCA supports elimination of certain duplicative requirements imposed upon common carriers engaged in communications between the continental United States and any foreign country. RCA also favors eliminating the reporting requirements of FCC Rule Sections 43.53 (report of the date of arrangements concerning the division of the total telegraph of such communications other than transiting), 43.61 (actual traffic and revenue data for international telecommunications traffic) and 43.82 (number of activated and idle circuits used to provide international services). The reports produce no meaningful new data, and are not essential to protection of the public interest.

V. Part 52 – Numbering

Abbreviated Dialing Codes. RCA urges the Commission to refrain from assigning the numbers 211, 311 and 511 as abbreviated dialing codes for use by government entities to provide travel information and other community services. The codes should be preserved, possibly for commercial offerings to meet specific needs that have yet to be identified.

Number Portability. RCA supports elimination of the mandate that wireless carriers provide number portability. The imposition of this very expensive, unfunded mandate is not necessary. Number portability is a convenience, not a feature essential to public service; it should be permitted to evolve at its own pace into a commercially feasible option. The wireless industry is presently overloaded with new requirements for technology upgrades and capabilities including implementation of 911/E911 requirements and CALEA compliance. Relief from the number portability requirement would help the industry meet higher priorities.

VI. Part 63 – Extension of Lines

RCA supports elimination of the requirement of FCC Rule Section 63.21 that carriers holding international Section 214 authorizations must file annual reports of overseas telecommunications traffic as required by §43.61, discussed above. The information is duplicative and its usefulness is not obvious.

VII. Conclusion

RCA endorses the FCC's inclination to impose upon wireless carriers only those rules and requirements necessary to enable the Commission to oversee the industry and at the same time protect the interests of users and related enterprises, including public safety organizations. RCA is pleased to participate in the 2002 Biennial Review process by offering its support for adoption of those changes which will streamline the agency's regulatory requirements. Maintenance of a concise set of rules which precisely implement the intent of the Commission will serve the public

interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Loren B. Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 4th day of November, 2002, sent by hand-delivery, a copy of the foregoing REPLY COMMENTS to the following:

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